



DSW Primer

The Definition of Solid Waste

Summary

The U.S. Department of Commerce has been working with the U.S. Environmental Protection Agency ("EPA") on the proposed revisions to the Definition of Solid Waste ("DSW") rule under the Resource Conservation and Recovery Act ("RCRA") as part of the Department's regulatory review program mandated by President Bush's Economic Agenda and the American Competitiveness Initiative. In its collaboration with regulatory agencies, the Department conducts quantitative and qualitative economic analysis to assess the impact of new rules on business competitiveness.

Under the current RCRA, certain waste streams are regulated as hazardous wastes, even when they are being recycled. EPA is working to clarify the definition of solid waste under RCRA so that a material destined for recycling is not subject to regulation as hazardous waste as it is not being "discarded." The aim is to lower the costs of recycling and encourage manufacturers to recycle more hazardous materials.

The industries that are most affected by the rule are those that already recycle hazardous waste, but in theory it should also be possible for facilities to enter the recycling market that do not have a RCRA permit to handle hazardous waste. The industries affected the most by the rule are those that generate a large amount of potentially recyclable material, such as the steel production industry (where two thirds of emission control dust is not recycled) and the chemical and pharmaceutical production industry (where organic solvents could be recycled).

The Manufacturing and Services ("MAS") unit of Commerce brings industry expertise and analytical capacity to the rulemaking process. Generally speaking, MAS's specialty is evaluating the upstream and downstream impacts of a rule change, including the effects on international trade flows. In this particular rule, MAS is focused on estimating the rule's impact on non-RCRA permitted recyclers. MAS has reached out to industry for comments on MAS's analyses through several roundtable discussions and meetings. MAS continues to work in partnership with EPA to raise industry's awareness of the rulemaking.

EPA's 2007 Supplemental Proposal

EPA put forward several options for revising the definition of solid waste in its initial proposed rulemaking, published October 28, 2003. These options range from narrow exclusions to materials generated and recycled intra-industry or in a continuous process, to a broad option that would exclude all "legitimate" reclamation. The agency proposed to define legitimacy criteria to distinguish recycling from "sham recycling."

EPA published its supplemental proposal in the Federal Register on March 26, 2007. EPA proposed to revise the definition of solid waste to exclude from regulation certain hazardous

secondary materials that are legitimately recycled. The supplemental proposal fundamentally alters the earlier proposed rule.

In the supplemental proposal, the definition of solid waste would be changed so that recycled material is not discarded and therefore not a hazardous waste (in addition to exclusions in place already) if:

- 1) It is recycled under the control of the generating facility, either onsite, within the same company, or via a specific type of tolling manufacture agreement;
- 2) It is recycled off-site by someone other than the generator if certain additional requirements are met; or
- 3) EPA makes a determination on a case-by-case basis that particular material is not discarded and therefore not a solid waste.

Generators wishing to transport hazardous material off-site to third-party recyclers would have to:

- 1) Make reasonable efforts to ensure that the third-party recycler will safely and legitimately recycle the material;
- 2) Maintain records at the generating facility for three years of all off-site shipments of excluded materials;
- 3) Contain their material if it is based in a land-based unit; and
- 4) Comply with notice and consent requirement if exporting the materials to a foreign country.

Third-party recyclers would have to:

- 1) Maintain records for three years of all shipments of excluded materials;
- 2) Manage the material in a way that is no less protective than analogous raw materials are managed;
- 3) Manage any residuals from the recycling process in a manner that is protective of human health and the environment; and
- 4) Provide “financial assurance” that the site can be cleaned up if the recycler goes out of business.

In addition, both generator and recyclers would be prohibited from speculatively accumulating recyclable material, and they would send a one-time notification of their intent to recycle excluded materials to the regional EPA administrator.

Effect on U.S. Industry

EPA’s regulatory impact analysis (RIA) describes the rule’s effects on industry. According to EPA, in the most likely scenario 4,553 facilities that generate and/or recycle hazardous secondary materials would be affected by the action. Most of these facilities are in manufacturing industries, and the most common types of affected recyclable materials are emission control dust (72 percent of total), a zinc-laden waste stream generated during the production of galvanized steel, and organic liquids and solvents (19.2 percent of total) generated by the chemical industry (including pharmaceutical manufacturing) and the waste management industry. Much of these waste streams are recycled already, including about 1/3 of emissions control dust.

While the total value of potentially recoverable waste streams is \$115 million, some of the waste streams already have exclusions in the current rule that may make the increase in recycling resulting from the new rule rather small. The Regulatory Impact Assessment accompanying the proposed DSW rule estimates that the value of recoverable products due to increased recycling would be \$14 to \$22 million, mostly of organic solvents. The proposed changes were expected to result in net compliance cost savings to industry of approximately \$45 to \$205 million per year. The savings are mainly associated with lower costs for facilities that already recycle.

Compliance Cost Savings by NAICS Code

4-digit NAICS	NAICS Code Description	1997 Total Employees	Annual Value of Shipments	Annual Savings by 4-digit NAICS
		<i>1,000</i>	<i>\$ billions</i>	<i>\$ millions</i>
3254	Pharmaceutical and Medicine	252	188.7	11.8
3251	Basic Chemical Manufacturing	176	143.3	7.6
3252	Resin, Synthetic Rubber, Fibers	100	82.2	3.6
3314	Nonferrous Metal (e.g. aluminum)	66	29.3	2.1
5622	Waste Treatment & Disposal	53	13.7	1.8
3399	Other Misc. Mfg	434	73.5	1.1
3328	Coating, Engraving, Heat Treating	137	24.6	1.0
3241	Petroleum & Coal Products Mfg	108	237.9	0.9
3344	Semiconductor & Other Electronic	436	150.0	0.7
3311	Iron and Steel	121	63.3	0.5
3222	Converted Paper Product Mfg	373	105.6	0.2
	All Other NAICS			32.8

Source: EPA RIA, exhibit 7F.

Waste Management Industry Will Likely Lose Revenues

In its RIA, EPA quantified the “transfer effect” loss in annual business revenues that the DSW rulemaking options may have on the waste management industry. Its estimates were based on the 2002 Economic Census.

- Landfills: 14 to 60 (7% to 30%) of the 198 total US hazardous waste landfill-related business line facilities may lose 0.1% to 0.8% of annual business revenues (\$3 million to \$12 million annual loss).
- Incinerators: 5 to 22 (7% to 31%) of the total 71 US hazardous waste incinerator business line facilities may gain 0.2% or lose up to 2.0% of annual business revenues (\$0.8 million to \$13 million annual loss).
- Recyclers: 7 to 33 (6% to 31%) of the 108 hazardous waste recycler business line facilities may lose 3.1% to 5.7% of annual business revenues (\$36 million to \$66 million annual loss).

MAS held meetings with industry to discuss this and other industry issues in April-June 2007. To get more information, contact Man Cho in the Office of Materials and Machinery, 202-482-5159 or Man.Cho@mail.doc.gov.

The comment period for the rulemaking ends June 25, 2007. For more information on how to submit public comments, visit the Definition of Solid Waste rulemaking webpage at <http://www.epa.gov/epaoswer/hazwaste/dsw/abr.htm>.

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